WILMERHALE

January 19, 2011

David W. Ogden

+1 202 663 6440(t)
+1 202 663 6363(f)
david.ogden@wilmerhale.com

Hand Delivered

Cynthia Brown
Chief, Section of Administration
Surface Transportation Board
Office of Proceedings
395 E Street SW
Washington, DC 20423-0001

231709

Re: In re National Rail Passenger Corporation, Docket Number NOR 42134

Dear Ms. Brown:

WilmerHale represents the National Rail Passenger Corporation (Amtrak) in connection with its Petition for Relief by Amtrak Requiring the Initiation of an Investigation of Substandard Performance under Section 213 of the Passenger Rail Investment and Improvement Act of 2008.

This filing includes the original and ten hard copies of the petition, three CDs containing electronic copies of the petition, and the $250 filing fee. Please stamp one copy of this letter to indicate that all documents have been received and filed, and please return the stamped copy with my associate, Natalie Adams, for our files.

Thank you for your assistance in this matter. If you have any questions or concerns, please feel free to contact me.

Respectfully submitted.

David W. Ogden

231709

BEFORE THE
SURFACE TRANSPORTATION BOARD

IN RE NATIONAL RAILROAD PASSENGER CORPORATION: SECTION 213 INVESTIGATION OF SUBSTANDARD PERFORMANCE ON CANADIAN NATIONAL RAILWAY COMPANY RAIL LINES	Docket No. NOR 42134

PETITION FOR RELIEF BY AMTRAK REQUIRING THE INITIATION OF AN INVESTIGATION OF SUBSTANDARD PERFORMANCE UNDER SECTION 213 OF THE PASSENGER RAIL INVESTMENT AND IMPROVEMENT ACT OF 2008

Eleanor D. Acheson
William Herrmann
Christine Lanzon
National Railroad Passenger Corporation
60 Massachusetts Avenue, N.E.
Washington, D.C. 20002

David W. Ogden
Jonathan E. Paikin
Wilmer Cutler Pickering Hale and Dorr, LLP
1875 Pennsylvania Avenue, NW
Washington, DC 20006

Counsel for National Railroad Passenger Corporation

FILED: _____

1. Pursuant to 49 C.F.R. §1117.1, the National Railroad Passenger Corporation ("Amtrak") hereby submits this petition to initiate an investigation by the Surface Transportation Board ("STB" or "Board") of the substandard performance of Amtrak passenger trains on rail lines owned by Canadian National Railway Company and its subsidiaries, Grand Trunk Western Railroad Company and Illinois Central Railroad Company (collectively "CN"). Under Section 213 of the Passenger Rail Investment and Improvement Act of 2008 ("PRIIA"), codified at 49 U.S.C. § 24308(f), "upon the filing of a complaint by Amtrak . . . the Board shall initiate [] an investigation" into the causes of delays incurred by Amtrak passenger trains operating over a rail carrier's lines.

2. Here, the excessive delays incurred by Amtrak passenger trains operating over rail lines owned by CN resulted in substandard on-time performance ("OTP") of Amtrak passenger trains in every quarter between October 2010 and September 2011 ("Fiscal Year 2011"). CN has engaged in a pattern and practice of obstructing and delaying Amtrak passenger trains in violation of its obligation to prioritize Amtrak trains over freight transportation under the preference requirement of 49 U.S.C. § 24308(c). CN has also failed to develop, implement, and/or comply with operational protocols that would significantly reduce delays to Amtrak passenger trains. Amtrak requests that, at the conclusion of the investigation, the STB so find, make recommendations to improve CN's deficient performance in handling Amtrak passenger trains, and award damages against CN sufficient to deter future preference violations.

I. PRELIMINARY STATEMENT

3. Amtrak's passenger service has long been hindered by the choices and actions of CN. The performance of Amtrak trains operating over CN's rail lines has consistently fallen short of both the standards developed pursuant to Section 207 of PRIIA and the performance of Amtrak trains on every other Class 1 host railroad in the country.

4. These performance deficiencies have been caused, in large part, by (1) CN's pattern and practice of prioritizing freight trains over Amtrak passenger trains, in violation of Amtrak's statutory preference rights and (2) CN's failure to implement and/or enforce operational procedures that would minimize delays to Amtrak passenger trains. Changes in CN's practices and operations would significantly improve Amtrak's on-time performance and reduce CN-responsible delays to Amtrak trains. But despite repeated reasonable requests from Amtrak, CN has failed to acknowledge its responsibilities to Amtrak and has refused to adopt measures necessary to satisfy the standards developed pursuant to Section 207.

II. THE PARTIES

A. Amtrak

5. The National Railroad Passenger Corporation is incorporated in the District of Columbia. Its principal place of business is located at 60 Massachusetts Avenue, N.E. Washington, D.C. 20002.

6. In 1970, Congress created Amtrak pursuant to the Rail Passenger Service Act ("RPSA"), 49 U.S.C. § 24101 *et seq.*, to assume the passenger rail service that private railroad companies had long been legally required to operate.[1] Congress vested Amtrak with the general mission of providing "efficient and effective intercity passenger rail mobility consisting of high quality service."[2] Congress tasked Amtrak to achieve a system-wide average train speed of 60 miles per hour and to ensure station arrivals within 15 minutes of the times published in Amtrak's schedules.[3]

---

1 *See* S. Rep. No. 110-67, at 1 (2007) ("Amtrak was established . . . to relieve the then financially beleaguered private railroad sector of its common carrier obligations to offer intercity passenger transportation and to preserve and reinvigorate intercity passenger rail service throughout the Nation.").

2 49 U.S.C. § 24101(b).

3 *Id.* § 24101(c).

7. Each day, Amtrak's nationwide rail network operates approximately 300 trains carrying an average of over 78,000 passengers. Amtrak trains traverse 21,000 route miles, through 46 states, the District of Columbia, and three Canadian provinces, serving more than 500 destinations. In 2010, Amtrak provided service to 29 million passengers.

8. Outside of Western Michigan and the Northeast Corridor—generally between Boston and Washington, D.C., with branches to Springfield, Massachusetts and Harrisburg, Pennsylvania—Amtrak generally does not own the rail lines over which it operates. Rather, Amtrak passenger trains operate over track owned and controlled by "host railroads" such as CN. CN and other host railroads control the movement of Amtrak trains operating on their rail lines and thus, in order to meet its schedules, Amtrak depends on those host railroads, including CN, to dispatch Amtrak's trains appropriately.

B. Canadian National Railway Company

9. Canadian National Railway Company was incorporated in 1922 and has its principal place of business at 935 de la Gauchetière Street West, Quebec, H3B 2M9, Canada. Grand Trunk Western Railroad Company and Illinois Central Railroad Company are the United States subsidiaries of Canadian National, with their principal offices at 17641 Ashland Avenue, Homewood, Illinois 60430.[4] These entities are referred to collectively herein as "CN."

10. CN has approximately 22,000 employees and owns approximately 20,600 miles of track.[5] It is the largest railway in Canada, in both revenue and physical size.[6]

---

[4] Canadian National Railway Company, 2010 Annual Information Form 4 (Feb. 9, 2011).

[5] Canadian National Railway Company, "Company Information," http://www.cn.ca/en/company-snapshot-profile-facts-figures.htm. (last accessed December 22, 2011).

[6] *Id.*

11. In 2010, CN earned approximately $8 billion in revenue.[7] In the third quarter of 2011, CN's net income increased 19%, its operating income 12%, its revenue 9%, and its car loadings 4% above the same quarter in the previous year.[8] In that same quarter, CN earned a net profit margin of 28.57%,[9] and on November 20, 2011, CN was named one of the highest-yielding Canadian stocks trading in the United States.[10] Overall, CN has one of the lowest operating ratios (operating expenses divided by net sales) among Class 1 railroads.[11]

12. CN describes itself as a "precision railroad" whose "daily operation is run to much higher standards than those of the 'scheduled' railroad."[12] Specifically, CN claims that "the discipline to make things run like clockwork permeates the entire company,"[13] and that it "is

---

7 Canadian National Railway Company, "Company Information," http://www.cn.ca/en/company-snapshot-profile-facts-figures.htm. (last accessed December 22, 2011).

8 Canadian National Railway Company News Release (October 25, 2011), *available at* http://www.cn.ca/documents/Investor-Financial-Quarterly-2011/Q3-2011-Financial-news-release-en.pdf.

9 Google Finance, "Canadian National Railway Company," http://www.google.com/finance?cid=675900# (last accessed December 22, 2011).

10 Seeking Alpha, "Highest Yielding Canadian Stocks Trading in the US," http://seekingalpha.com/article/309114-highest-yielding-canadian-stocks-trading-in-the-u-s?source=marketwatch (last accessed December 22, 2011).

11 Canadian National Railway Company, "Company Information," http://www.cn.ca/en/company-snapshot-profile-facts-figures.htm. (last accessed December 22, 2011).

12 E. Hunter Harrison, How We Work and Why 56 (2005).

13 *Id.* at 57.

committed to moving more freight, more quickly and with fewer assets."[14] In fact, CN has recently reported 90% or better on-time performance for various freight customers.[15]

13. Unfortunately, this claimed precision has not translated into Amtrak trains running like clockwork on CN's rail lines. Either because Amtrak is not a priority or because CN sacrifices Amtrak's schedule in order to achieve its own, Amtrak's delays on CN's "precision railroad" are far worse than on any other Class 1 host railroad in the country.

C. **Amtrak Services on CN's Rail Lines**

14. In the United States, the following Amtrak services regularly operate over significant segments of CN track:

- **Illini/Saluki (*Chicago to Carbondale, Illinois*).** Amtrak's Illini/Saluki service (trains 390, 391, 392, and 393) operates daily along the 309-mile route between Chicago and Carbondale, Illinois. CN owns almost the entire route, and ten of the eleven station stops along this route are on CN's track. Approximately 313,000 passengers rely on the state-supported Illini/Saluki service each year.
- **City of New Orleans (*Chicago to New Orleans*).** Amtrak's City of New Orleans service (trains 58 and 59) operates daily in both directions between Chicago and New Orleans with stops in Carbondale, Champaign, Memphis, and Jackson, Mississippi, among other cities, carrying approximately 233,300 passengers each year. Almost the entire 900-mile route, including the track running through 19 of the 21 station stops, is owned by CN.

---

[14] Canadian National Railway Company, "Company Information," http://www.cn.ca/en/company-snapshot-profile-facts-figures.htm. (last accessed December 22, 2011).

[15] "*CN Launches Scheduled Grain Delivery Plan*," Edmonton Journal (Sept. 1, 2010) (discussing CN's grain-delivery plan that "has resulted in a 90-percent success rate in delivering specified cars to specified elevators on a specific day"); Jean Jacques Ruest, Executive Vice President and Chief Marketing Officer of CN, remarks at Canadian National Railway at Bank of America Merrill Lynch Global Transportation (June 16, 2010) (discussing CN's ability to deliver freight loads for its North American potash customers faster than any of the customers' competition); Luc Jobin, Executive Vice President and Chief Financial Officer of CN, remarks at Canadian National Railway at National Bank Financial Transportation & Logistics Conference (March 24, 2010) ("We are consistently meeting some very good operating metrics. We are fifth-day, fifth morning, actually into Chicago and sixth morning into Memphis and we're doing that somewhere on 96%, 97%, 98% on time.").

- **Blue Water (*Chicago to Port Huron, Michigan*).** Amtrak's Blue Water service (trains 364 and 365) operates daily between Chicago and Port Huron, Michigan, carrying approximately 187,100 passengers each year. Approximately half of the state-supported 319-mile route, including the track that runs through six of the eleven station stops, belongs to CN.
- **Wolverine (*Chicago to Pontiac, Michigan*).** Amtrak's Wolverine service (trains 350 through 355) operates three daily trains in each direction between Chicago and Pontiac, Michigan, carrying over 503,300 passengers each year. CN owns two rail segments on the 304-mile route, and five of the seventeen station stops are located on the CN segments. The first CN segment is 1.2 miles long and is located between the "Baron" and "Gord" interlockings in Battle Creek, Michigan. The second is a 25.3 mile segment between Vinewood, Michigan and Pontiac, Michigan.
- **Lincoln (*Chicago to Joliet, Illinois*).** Amtrak's state-supported Lincoln service (trains 300 through 307) operates eight trains daily (four in each direction) over the 284-mile route between Chicago and St. Louis. Each year, approximately 550,000 travelers (more than 1,500 per day) depend on this service. The Lincoln service traverses a 35.3 mile rail segment, located between Chicago and Joliet, Illinois, that is owned by CN.
- **Texas Eagle (*Chicago to San Antonio).*** Amtrak's Texas Eagle service (trains 21 and 22) operates two trains over a 1,305-mile route between Chicago and San Antonio, carrying approximately 300,000 passengers each year. Between Chicago and Joliet, the Texas Eagle service traverses the same 35.3 mile rail segment owned by CN that is traversed by the Lincoln service.
- **Cardinal and Hoosier State (*Chicago Terminal*).** Each day, Amtrak's Cardinal service (trains 50 and 51) or its Hoosier State service (trains 850 and 851) operates over a 5.8 mile CN-owned segment in the Chicago area between Maynard, Indiana and Thornton Junction, Illinois. The segment is flanked by track owned by Union Pacific Railroad Corporation on the west and CSX Corporation on the east. Amtrak's Cardinal service crosses this segment on its 1,147-mile route connecting New York to Chicago. The Hoosier State service crosses the CN segment on its 196-mile route between Chicago and Indianapolis. The two services combined serve approximately 150,000 passengers per year, and, in Fiscal Year 2011, passengers boarded or de-boarded approximately 90,000 times at the Chicago station alone.[16]

III. STATUTORY AND REGULATORY RIGHTS OF AMTRAK VIS-À-VIS HOST RAILROADS

15. Both RPSA and PRIIA govern the relationship between Amtrak and the host railroads. Under RPSA, host railroads' dispatchers must prioritize Amtrak trains over freight transportation, subject only to very limited exceptions. This statutory right to "preference" is

[16] CN also owns Canadian portions of Amtrak's Adirondack route as well as a 2.2-mile segment within Amtrak's 1,995-mile Sunset Limited route. Amtrak has not included any discussion of the on-time performance of these services in this petition.

essential to Amtrak's operations, because without it host railroads would prioritize their own freight trains over Amtrak passenger trains with disastrous consequences for intercity rail passenger service throughout the country. This statutory preference mandate, created by Congress three years after Amtrak came into existence to address the poor handling of Amtrak trains by host railroads,[17] built upon dispatching priorities for passenger trains that private railroads had historically honored when they operated both freight and passenger service. The STB and the Department of Justice each has responsibility to enforce Amtrak's statutory right to preference.

16. Section 207 of PRIIA provides metrics and minimum standards for measuring the performance and service quality of Amtrak's operations over host railroads. If the minimum performance standards are not met, Section 213 charges the STB with the responsibility to investigate and establish the causes of the failure, to make recommendations for improvement, and to award relief, including damages, upon finding preference violations.

A. Amtrak's Statutory Right To Preference Over Freight Transportation

17. Federal law requires that host railroads give Amtrak trains the right of way whenever freight and Amtrak trains have competing rail needs. Specifically, Section 24308(c) of Title 49 of the United States Code provides:

> **Preference over freight transportation.** Except in an emergency, *intercity and commuter rail passenger transportation provided by or for Amtrak has preference over freight transportation in using a rail line, junction, or crossing unless the Board orders otherwise under this subsection.* A rail carrier affected by this subsection may apply to the Board for relief. If the Board, after an opportunity for a hearing under section 553 of title 5, decides that preference for intercity and commuter rail passenger transportation materially will lessen the quality of freight transportation provided to shippers, the Board shall establish the rights of the carrier and Amtrak on reasonable terms.[18]

---

17 Amtrak Improvement Act of 1973, Pub. L. No. 93-146, § 10(2), 87 Stat. 548, 552 (1973).

18 49 U.S.C. § 24308(c).

Thus, "as a matter of Federal law," host railroads "are required to prioritize Amtrak trains over freight trains when dispatching traffic over their rails."[19]

18. As set forth in the statute, federal law affords only two narrow exceptions to Amtrak's preference rights: (1) when there is an emergency situation, or (2) when, upon petition by the host railroad, the STB has issued an order creating an exception premised on an express finding that without the exception, preference in a particular location "materially will lessen the quality of freight transportation provided to shippers."[20] In the latter case, the statute provides that the STB will "establish the rights of the carrier and Amtrak on reasonable terms."[21] Absent one of these two narrow exceptions, host railroad dispatchers must ensure that freight trains yield to Amtrak passenger trains and do not obstruct or delay Amtrak trains' use of rail lines, junctions, or crossings.[22]

19. The preference statute is meant to ensure that Amtrak trains are given the priority necessary to provide effective service to rail passengers while operating over rail lines owned and controlled by freight railroads whose own commercial interests would otherwise favor subordinating Amtrak trains to freight traffic.[23]

---

19 *Amtrak Reform and FY 2008 Budget: Hearing Before the Senate Appropriations Subcommittee on Transportation and Housing and Urban Development*, 2007 WL 614849 (Feb. 28, 2007) (statement of Sen. Murray).

20 49 U.S.C. § 24308(c).

21 *Id.*

22 *See National Rail Freight Infrastructure Capacity and Investment Study for AAR*, Cambridge Systematics, Inc., § 4.3 (Sept. 2007) ("By law, Amtrak passenger trains operating over rail freight lines must be given priority; this means that when Amtrak trains meet or overtake freight trains, the freight trains are shunted to sidings or parallel lines until the passenger train has passed.").

23 *See* Frank N. Wilder (economist and author), "Amtrak: The Challenge Begins With Freight Railroads" (2008) ("Major freight railroads . . . [are] anxious to vanquish those passenger trains, which interfere with more profitable freight traffic . . . . As long as there are no penalties for delaying Amtrak trains, the freight railroads have every incentive not to give them preference."), *available at* http://ar010.york.cuny.edu/irps-up2date/winter-2008-issue-briefs/Wilner-AMTRAK-03.08.pdf.

20. Congress has empowered both the STB and the Department of Justice to enforce Amtrak's statutory rights to dispatching preference. Pursuant to Section 213 of PRIIA, the STB is required to conduct an investigation upon petition by Amtrak or may do so on its own initiative when Amtrak trains operating over a particular host railroad fail to meet specific mandatory performance standards created pursuant to PRIIA Section 207.[24] The STB is also empowered to award damages when it determines that a host railroad is violating Amtrak's statutory preference rights.[25] The Department of Justice is authorized to enforce Amtrak's preference rights by bringing an action in federal court to enjoin host railroads from violating the preference statute.[26]

B. The PRIIA Section 207 Metrics and Standards

21. Congress enacted PRIIA on October 16, 2008 "to promote the expansion and improvement of intercity passenger rail service."[27] Section 207 of PRIIA charged the Federal Railroad Administration (FRA) and Amtrak jointly to develop, in consultation with the STB, metrics and standards for measuring intercity passenger train performance.[28] Congress intended the metrics and standards "[t]o track and enhance customer service, train performance, and reliability."[29]

22. The statute provides that "such metrics at a minimum, [shall] include on-time performance and delays incurred by intercity passenger trains on the rail lines of each rail carrier."[30] FRA posted the proposed performance metrics and standards on its website and

---

24 49 U.S.C. § 24308(f).
25 *Id.*
26 *Id.* § 24103(a)(1).
27 S. Rep. No 110-67, at 7 (2007).
28 *Id.* at 9.
29 *Id.*
30 Passenger Rail Investment and Improvement Act of 2008, Pub. Law. 110-432, § 207, 122 Stat. 4907, 4916 (2008).

published a notice of the proposal in the Federal Register inviting stakeholders, such as host railroads, states, and rail-workers, to submit comments on the proposal.[31] Following comments and responses, FRA, in consultation with Amtrak, revised and finalized the proposed metrics and standards.

23. The Final Metrics and Standards for Intercity Passenger Rail Service ("the Section 207 standards") include four categories related to host railroad performance in handling Amtrak trains: End Point OTP, All Stations OTP, Host-Responsible Delay, and Effective Speed. The End Point OTP, Host-Responsible Delay, and Effective Speed standards took effect on May 12, 2010.[32] The All Stations OTP standard took effect in October 2011.[33]

24. As explained below, CN has failed to achieve the Section 207 Host-Responsible Delay standard during every quarter for every Amtrak service since the Section 207 standards took effect. As a consequence, nearly every Amtrak service operating on CN failed to achieve the standards for Endpoint OTP and All Stations OTP during each of those quarters.

1. *Measuring Performance*

25. Amtrak's ARROW system and OTP Monitor Report System ("MRS") contain the data required to calculate the four Section 207 metrics.

26. Most Amtrak locomotives are equipped with Train Communication Data ("TCD") units that communicate with a Global Positioning Satellite ("GPS") system to determine the trains' locations and to transmit arrival and departure times to the National Train Activity Monitoring System ("NTAMS"). The NTAMS system generates station arrival and

---

31 74 Fed. Reg. 10983 (2009).

32 Federal Railroad Administration, *Final Metrics and Stds. Under Section 207 of the Passenger Rail Investment and Improvement Act of 2008* ("*Final Metrics and Stds.*") at 15, *available at* http://www.fra.dot.gov/rpd/Downloads/Section_207_Metrics_and_Standards_2010-05-05_Final.pdf (last accessed December 22, 2011).

33 *Id.* at 26.

departure times when locomotives equipped with TCD travel through pre-defined geographic areas called geo-fences. These geo-fences are located at passenger stations across Amtrak's network.[34] When a locomotive passes into the geo-fence at a station and stops, NTAMS records an arrival time for that station. NTAMS records the train's departure time from that station at the moment the locomotive passes out of the geo-fence (i.e, out of the station). NTAMS electronically transmits these train arrival and departure times in real time into the ARROW system, which then transmits the data to the MRS system where it is stored.[35]

27. Amtrak conductors nationwide use a uniform and systematic method to record the delay minutes for each Amtrak passenger train and the cause of those delays. A conductor on every Amtrak train outside of the Northeast Corridor makes an entry into his or her Conductor Delay Report ("CDR") when his or her train is delayed. Conductors record the cause, location, and length of each delay. The CDR incorporates conductors' direct observations as well as any information conductors gain from train bulletins, radio traffic, train crews, dispatchers, engineers, maintenance-of-way foremen, or others regarding the source of the delay.[36]

28. At the end of each trip, the conductor faxes the CDR to one of three locations—Amtrak's Consolidated National Operations Center ("CNOC"), Amtrak's Oakland, California office, or Amtrak's Boston, Massachusetts office—for entry into the ARROW system. Unless otherwise agreed, the conductor also faxes the CDR to the relevant host railroad(s) for review at the end of each trip. Host railroads, including CN, review the data for accuracy and

---

[34] Many host railroads also electronically submit data interchange messages to ARROW relaying the passing times of route "X-points," or non-station locations.

[35] If an electronically established time is unavailable or observed to be in error, an authorized Amtrak employee at the station enters the arrival or departure time manually into the ARROW system, or Amtrak's Consolidated National Operations Center ("CNOC") personnel enter into ARROW the arrival or departure time that was reported on the Conductor Delay Report for that train.

[36] Conductor delay reporting procedures are outlined in Chapter 7 of Amtrak's Service Standards Manual and in Amtrak's Delay Data Recording Policy.

may offer corrections or clarifications. During the seven days after a train's origination date, Amtrak addresses any discrepancies that have been identified. Thus, the final delay data reflect host railroads' review and input.

29. Using the data collected via the above processes, Amtrak calculates the four performance metrics of passenger trains on each host railroad and reports these numbers to the FRA on a quarterly basis, in accordance with PRIIA. Each of these metrics targets a particular performance issue.

2. *End Point OTP*

30. End Point OTP compares the actual times at which Amtrak trains arrive at their final route destinations to their scheduled arrival times. The Section 207 standards define trains as "on-time" if the trains arrive at their end points within the tolerances that the standards assign to them based on their route mileage.[37]

31. Amtrak calculates the quarterly End Point OTP percentage for each route by dividing the total number of on-time trains by the total number of trains operated in the quarter.

32. The Section 207 standards require that, until Fiscal Year 2013, Amtrak trains must achieve at least 80% End Point OTP for each route. Beginning in Fiscal Year 2014, the Section 207 standards require that 85% of long distance trains and 90% of all other trains (except Acela) must arrive at their final destinations on time.[38]

---

[37] Trains are considered on time if they arrive at their scheduled end point within the delay tolerance determined by their route mileage. The mile tolerance is as follows:

Up to 250 miles:	10 minutes
251 to 350 miles:	15 minutes
351 to 450 miles:	20 minutes
451 to 550 miles:	25 minutes
551 or more miles:	30 minutes

Final Metrics and Stds. at 26 n.16.

[38] *Id.* at 26.

3. *All Stations OTP*

33. FRA has noted that "passengers utilizing intermediate stations amount to a significant portion of Amtrak's ridership—indeed, on many routes, a majority of the riders [utilize intermediate stations]."[39] Accordingly, "both principle and travel demand patterns" necessitated that the Section 207 standards include All Stations OTP, in addition to End Point OTP.[40]

34. All Stations OTP measures how often trains arrive on time at each station on a route, rather than just the endpoint station, by comparing Amtrak's actual arrival times to the published arrival times contained in Amtrak's schedules.[41] A train is considered "on-time" at a station if the actual arrival time is 15 or fewer minutes after the published time. Amtrak calculates the All Stations OTP percentage for a quarter by dividing the total number of on-time arrivals—counting separately every arrival at every station for every train on every date—by the total number of recorded station arrivals.

35. The Section 207 standards require trains to achieve 80% All Stations OTP in Fiscal Years 2012 and 2013. As of Fiscal Year 2014, All Stations OTP must be 85% for long distance trains and 90% for all other trains (except Acela).

4. *Host-Responsible Delay Minutes*

36. To help identify the specific causes associated with passenger train delays, the Section 207 standards include Host-Responsible Delays.[42] Amtrak's delay data include the type of each delay using pre-defined codes, which also indicate the party responsible for the delay. The party responsible for a delay is either the host, Amtrak, or a third-party.

---

39 *Final Metrics and Stds.* at 18.

40 *Id.* at 17.

41 At the initial terminals, the metric compares the actual departure time to the scheduled departure time.

42 *Final Metrics and Stds.* at 28.

37. Host-Responsible Delays are delays caused by (1) meeting or following freight trains ("FTI"); (2) meeting or following commuter trains ("CTI"); (3) meeting or following non-commuter passenger trains ("PTI"); (4) routing-dispatching ("RTE"); (5) slow orders (e.g., temporary reductions in speed limits) ("DSR"); (6) signals ("DCS"); (7) maintenance of way ("DMW"); (8) detours ("DTR"); and (9) debris strikes ("DBS"). The Amtrak delay data reflect the number of minutes of delay incurred by a train for of each of these types of delays.

38. Freight train interference, or "FTI," occurs when an Amtrak train is stopped or slowed due to meeting or following a freight train. For example, an FTI delay occurs when a host railroad's dispatcher stops an Amtrak train to allow a freight train to proceed first, compels an Amtrak train to operate behind a slower freight train or stop behind a stationary freight train, or directs an Amtrak train into or through a siding while a freight train passes on the main line. An FTI delay is a strong indicator of a preference violation because the preference statute requires that Amtrak trains be given priority over freight trains on every "rail line, junction, or crossing."[43] High levels of FTI usually indicate dispatching practices that improperly prioritize a host railroad's freight transportation over Amtrak passenger trains.

39. Under the Section 207 standards, host railroads are required to have fewer than 900 minutes of Host-Responsible Delay per 10,000 train miles.[44]

---

[43] 49 U.S.C. § 24308(c).

[44] *Final Metrics and Stds.* at 28. When the Section 207 standards were adopted, the initial proposal limited total Host-Responsible Delay to 700 minutes per 10,000 train miles. During the review and comment period, host railroads expressed concern that there were some routes where standards were more difficult to achieve. The FRA, in consultation with Amtrak, responded to these concerns by adjusting the delay-minute threshold from 700 to 900 minutes, to accommodate the host railroads' concerns while maintaining a single delay standard. *Id.*

5. *Effective Speed*

40. To identify and deter "schedule creep"—whereby scheduled trip durations are relaxed to accommodate more delay—the Section 207 standards include the Effective Speed of passenger trains. Effective Speed is the elapsed time between a train's scheduled departure time from its origination point and its actual arrival time at its end point, divided by the normal mileage between the two points Effective speed for each rolling four-quarter period must be better than or equal to the average effective speed for that route in fiscal year 2008.[45]

C. **The STB's Investigative and Enforcement Authority Pursuant to Section 213 of PRIIA**

41. Section 213 of PRIIA provides accountability mechanisms to ensure that Amtrak trains meet the minimum performance standards adopted pursuant to Section 207 of the Act.

42. Upon the filing of a complaint by Amtrak, a state, or a host railroad, PRIIA requires the STB to initiate an investigation "to determine whether and to what extent delays or failure to achieve minimum standards are due to causes that could reasonably be addressed by [the] rail carrier over whose tracks the intercity train operates."[46] The STB should initiate such an investigation pursuant to 49 C.F.R. §1111.7 and should conduct fact gathering as needed, including through the issuance of subpoenas pursuant to §1113.2. PRIIA expressly authorized the STB to "increase the number of Board employees by up to 15 for the 5 fiscal year period beginning with fiscal year 2009 to carry out its responsibilities" to conduct such investigations.[47]

---

45 *Final Metrics and Stds.* at 26.

46 49 U.S.C. § 24308(f)(1).

47 Passenger Rail Investment and Improvement Act of 2008, Pub. Law. 110-432, § 213, 122 Stat. 4907, 4916 (2008).

At the conclusion of the investigation, the STB must then "identify reasonable measures and make recommendations to improve the service, quality, and on-time performance of the train."[48]

43. If a host railroad's "failure to provide preference to Amtrak over freight transportation" contributes to Amtrak's trains not meeting the regulatory standards, "the Board may award damages against the host rail carrier," and "prescrib[e] such other relief to Amtrak as it determines to be reasonable and appropriate" to remedy Amtrak's financial loss and to "adequately deter future actions . . . likely to result in delays to Amtrak on the route involved."[49] Congress thus created Section 213 "to provide a forum for . . . adjudication of service disputes, including on-time performance problems."[50]

IV. CN'S FAILURE TO MEET THE SECTION 207 PERFORMANCE STANDARDS ON EACH ROUTE

44. During every calendar quarter in Fiscal Year 2011, Amtrak passenger trains operating over CN's rail lines have failed to meet the Section 207 standards for End Point OTP, All Stations OTP, and Host-Responsible Delay.[51] Indeed, CN's performance in handling Amtrak trains has failed to come close to the performance mandated by Congress, and has been far worse than every other Class 1 railroad.

A. CN's System-Wide Failure to Meet Section 207 Standards

45. With respect to End Point OTP—which requires Amtrak passenger trains to arrive on time at their final destinations at least 80% of the time—*seven of the eight Amtrak services* that operate over significant segments of CN's rail lines did not meet the standard for

---

48 49 U.S.C. § 24308(f)(1).

49 *Id.* § 24308(f).

50 S. Rep. No. 110-67, at 26 (2007).

51 In two quarters, the City of New Orleans met the standard for End Point OTP, and in one quarter, the Blue Water service met the standard for All Stations OTP. No other Amtrak service met the standard for End Point OTP or All Stations OTP in any quarter, and CN exceeded the allowable Host-Responsible Delay Minutes for every service in every quarter.

any quarter in Fiscal Year 2011.[52] The remaining service met this standard in only two of the quarters.[53]

46. Although the standard for All Stations OTP did not take effect until October 2011, Amtrak measured this significant performance metric during the previous fiscal year as well. During that time, only one Amtrak service operating on CN tracks achieved a quarterly average of 80% All Stations OTP for even a single quarter.

47. CN has also consistently failed to meet the Section 207 standard for Host-Responsible Delay. This standard limits each host railroad to 900 Host-Responsible Delay minutes for every 10,000 train miles. The delay minutes for which CN was responsible exceeded the standard—often significantly—on *every Amtrak service* operating on CN in *every quarter* of Fiscal Year 2011. During this timeframe, CN's average number of Host-Responsible Delay minutes per 10,000 train miles was 1,490 minutes—65% more than the 900-delay-minute limit. Forty-six percent (46%) of these delay minutes were attributable to FTI, a strong indicator that CN is routinely violating Amtrak's statutory preference rights. Indeed, for several of Amtrak's services, CN has caused more than 900 minutes of delay to Amtrak trains attributable to FTI *alone*.

48. The FTI delays on CN tracks surpass those on any other host railroad. The following graph demonstrates that on each CN segment, the incidence of FTI has far exceeded the average FTI delays of all other host railroads on segments of comparable length.[54]

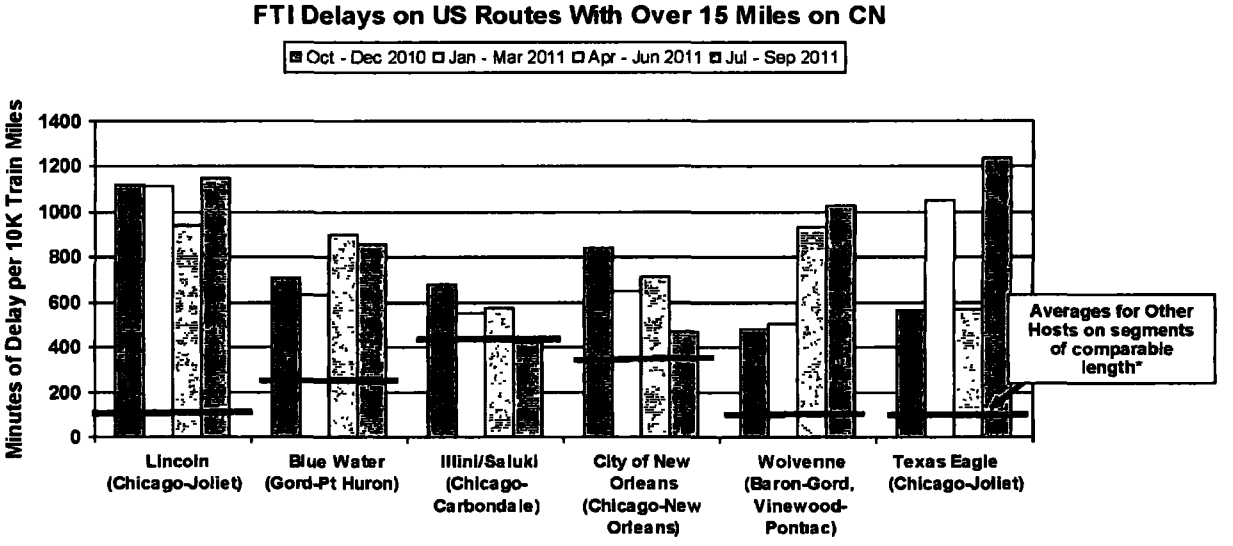
---

[52] As discussed in footnote 16, *supra*, Amtrak's Adirondack service operates over CN's rail lines in Canada and Amtrak's Sunset Limited service, which is nearly 2000 miles, operates over a 2.2-mile segment that is owned by CN.

[53] The City of New Orleans met the standard for End Point OTP in the first and third quarters of Fiscal Year 2011.

[54] The Cardinal, Hoosier State, Sunset Limited, and Adirondack services operate over CN segments that are less than 15 miles and are thus not represented on this graph.

CN Freight Train Interference Delays by Route and Quarter vs. National Averages
Routes with over 15 Route Miles – October 2010 through September 2011



Average Oct 2010 thru Sep 2011 FTI delays segments of specified length on Other Hosts:

- *15 – 100 mile segments (Lincoln/Texas Eagle = 37 miles, Wolverine = 26.4 miles): 85 mins/10K train miles*
- *100 – 200 mile segments (Blue Water = 159 miles): 219 mins/10K train miles*
- *300 – 400 mile segments (Illini/Saluki = 307 miles): 425 mins/10K train miles*
- *Over 500 mile segments (City of New Orleans = 932 miles): 333 mins/10K train miles*

*Includes all Amtrak hosts except CN, Amtrak, and Metro-North.

B. CN's Failure to Meet Section 207 Performance Standards on Each Amtrak Service

49. CN's failure to meet the Section 207 standards on each of Amtrak's services operating on CN is discussed and illustrated below:

1. *Illini/Saluki (Chicago to Carbondale, Illinois)*

50. During Fiscal Year 2011, CN exceeded the allowable Host-Responsible Delay minutes with respect to the Illini/Saluki service in every single quarter. As a result, the service also failed to meet the End Point OTP and All Stations OTP standards in every quarter.

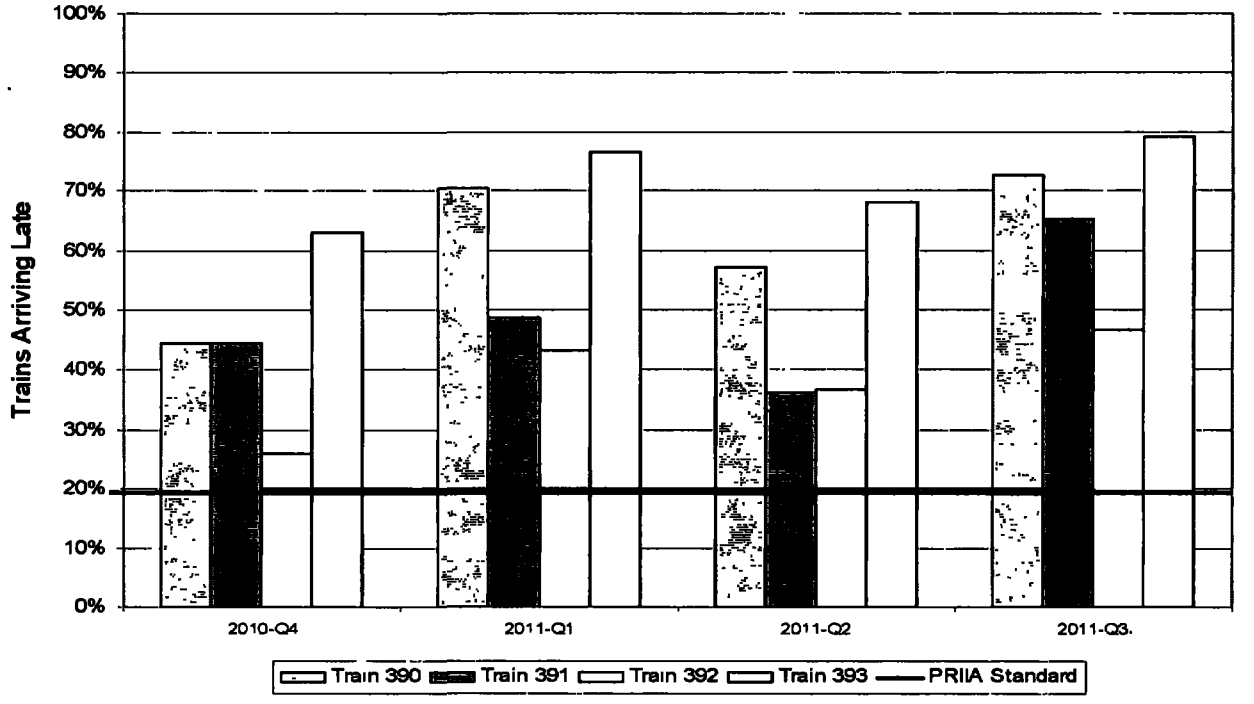
51. The Illini/Saluki service operates between Chicago and Carbondale on a route owned almost entirely by CN. Outside of Chicago, the route's two busiest stations are

Carbondale, home of Southern Illinois University, and Champaign, home of the University of Illinois.

52. In 2006, local communities led a movement to expand the Illini/Saluki service, in response to which the state of Illinois increased its financial support to the route, allowing Amtrak to double the number of trains and passengers traveling over the route daily. Regrettably for the increasing number of passengers who depend on it, this service regularly experiences significant delays.

53. Section 207's 80% End Point OTP standard allows only 20% of Amtrak trains to arrive late to their destinations. During Fiscal Year 2011, twice as many Illini/Saluki trains—over 40%—arrived late to their end-points. As the graph below demonstrates, in the last quarter of Fiscal Year 2011, three of the four Amtrak trains that operate over this route were late more than 60% of the time, far exceeding the Section 207 standard:

Illini/Saluki Service
Percent of Trains Arriving Late by Quarter: October 2010 - September 2011



54. Similarly, All Stations OTP for the route was less than 49% for the same one-year period.

55. Interference from CN's freight trains is a large contributor to the consistently late arrival of trains on the Illini/Saluki service. CN imposed FTI delays on 83% of the trips on this Amtrak service for a total of 24,666 minutes of FTI delay in Fiscal Year 2011. This amount of FTI delay surpassed the average amount of FTI delay imposed by other hosts on route segments of comparable lengths.

56. Many of the FTI delays on this route occur when CN dispatchers compel Amtrak trains to enter and wait in sidings while CN's "Q" trains use the main lines.[55] This is a clear violation of Amtrak's statutory right to preference. Delays on this segment could be reduced significantly if CN complied with its legal obligations to afford Amtrak its statutory preference right.

2. *City of New Orleans (Chicago to New Orleans)*

57. Just as on the Illini/Saluki service, in every quarter of Fiscal Year 2011, CN far exceeded the 900 minutes of Host-Responsible Delay permitted under the Section 207 standards for the City of New Orleans service. The City of New Orleans failed to meet the All Stations OTP standard in any quarter and met the End Point OTP standard in only two quarters of that fiscal year.

58. Like the Illini/Saluki, the City of New Orleans service operates over CN's rail lines between Chicago and Carbondale. It then continues on CN's tracks for the remainder of its 900-mile route to New Orleans. Of the eleven cities that the City of New Orleans serves south of the Illini/Saluki end point in Carbondale, nine are more than 25 miles from the nearest airport

[55] A "Q" train is a train that CN gives high priority in dispatching decisions. Q trains often carry goods for shippers with whom CN has contracts containing performance guarantees.

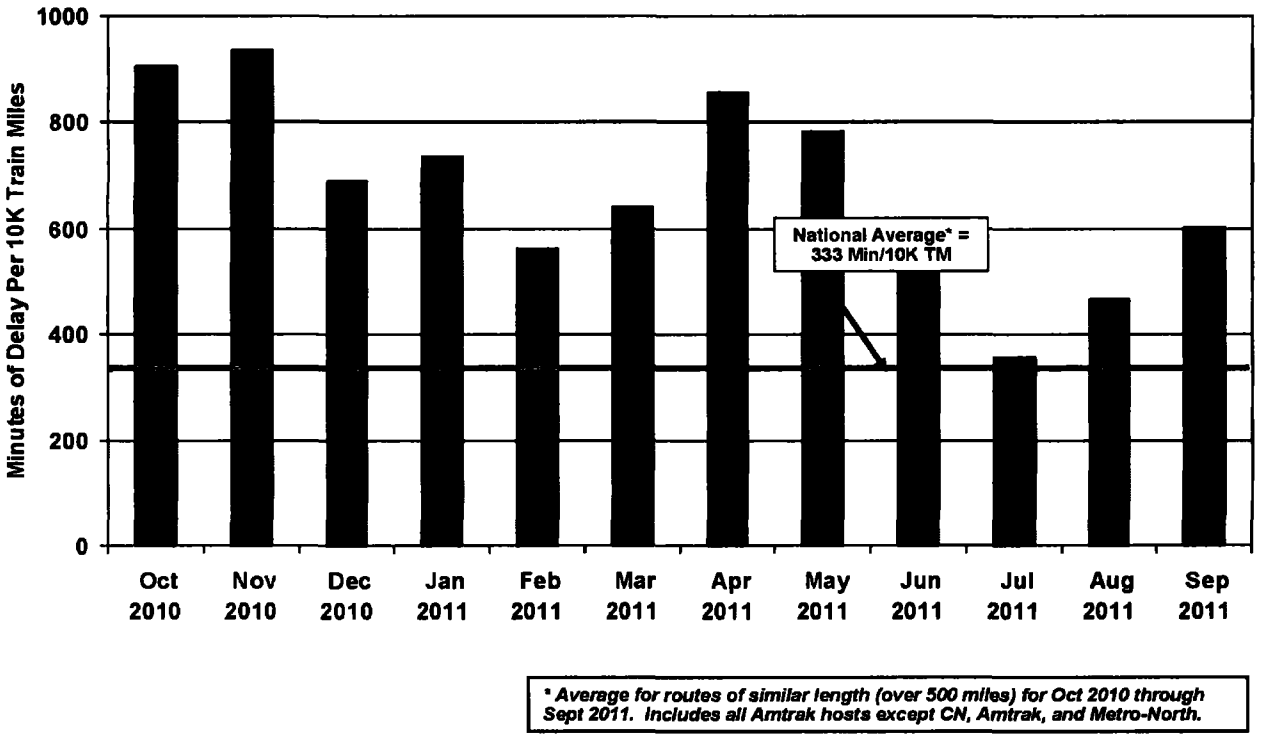
and more than 75 miles from the nearest hub airport. Six of the cities have no comparable intercity bus service. Thus, many people south of Carbondale rely on Amtrak service for their basic travel needs.

59. The City of New Orleans trains consistently experience the same unlawful dispatching practices and delays experienced by Illini/Saluki trains, both between Chicago and Carbondale, and on the remainder of their route. Significant amounts of recovery time—extra time incorporated into a train's scheduled trip-duration in anticipation of delays—are built into the City of New Orleans' schedule. Recovery time allows many trains to arrive at their end points "on-time," even after experiencing substantial delays. Notwithstanding the large amounts of recovery time built into the City of New Orleans' schedule, in Fiscal Year 2011, the service achieved only 77% End Point OTP. The excessive delays experienced by travelers on the City of New Orleans trains is illustrated by the fact that the service experienced less than 55% All Stations OTP during that period.

60. CN-imposed freight train interference contributes considerably to the City of New Orleans' failure to meet the Section 207 standards. In fact, in Fiscal Year 2011, CN allowed FTI to slow or stop Amtrak trains *on 99% of the trips* on the City of New Orleans service, for a total of 43,780 FTI delay minutes.

61. CN imposed more FTI delays on the City of New Orleans service than other hosts railroads imposed on Amtrak trains operating over segments of similar length during the same period:

City of New Orleans Service
CN Freight Train Interference Delay



62. As with the Illini/Saluki service, CN's unlawful dispatching choices that prefer CN's freight traffic over Amtrak passenger trains drove the City of New Orleans' FTI delays.

3. *Blue Water (Chicago to Port Huron, Michigan)*

63. CN failed to meet the Section 207 standard for Host-Responsible Delay for the Blue Water service in every single quarter of Fiscal Year 2011. CN's high delays contributed to the Blue Water's failure to meet the End Point OTP standard in any quarter and its failure to meet the All Stations OTP standard in three of the four quarters.

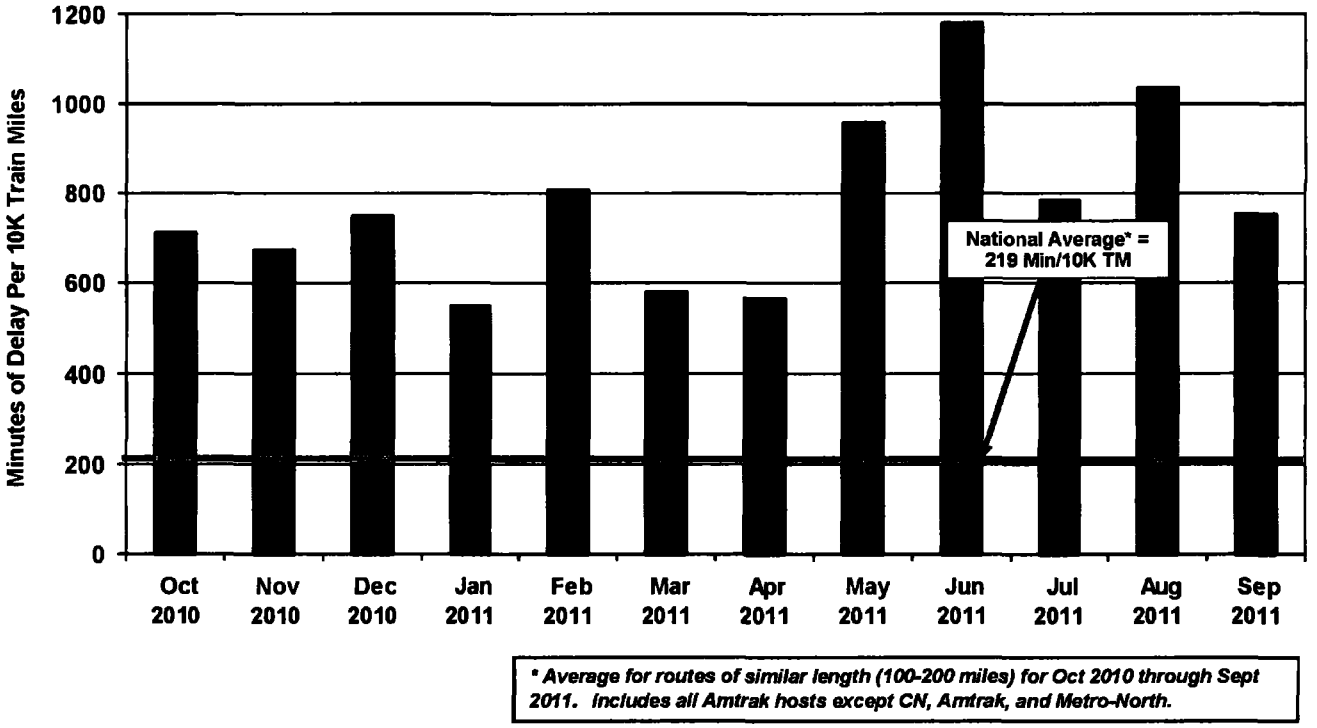
64. Amtrak's Blue Water service, operating between Chicago and Port Huron, Michigan, is a fast-growing service. Among the communities it serves are East Lansing, home of Michigan State University; Kalamazoo, home of Western Michigan University; and Battle

Creek, headquarters of the Kellogg Company. Of the eleven cities the Blue Water serves, half the cities have no intercity bus service and one third of the cities are located more than 25 miles from the nearest airport and more than 75 miles from the nearest hub airport.

65. In Fiscal Year 2011, the Blue Water—which operates over CN's rail lines for half its route—averaged less than 55% End Point OTP and only 71% All Stations OTP.

66. As with the City of New Orleans, CN has allowed freight train interference on the Blue Water to be far more severe than on comparable routes dispatched by other host railroads:

Blue Water Service
CN Freight Train Interference Delay



67. As the chart above shows, the amount of delay due to CN's FTI is consistently double—and often triple—the average FTI delay minutes on routes of similar distance

dispatched by other host railroads. CN's dispatching decisions prioritizing freight over passenger traffic is a key contributor to the poor performance of the Blue Water service.

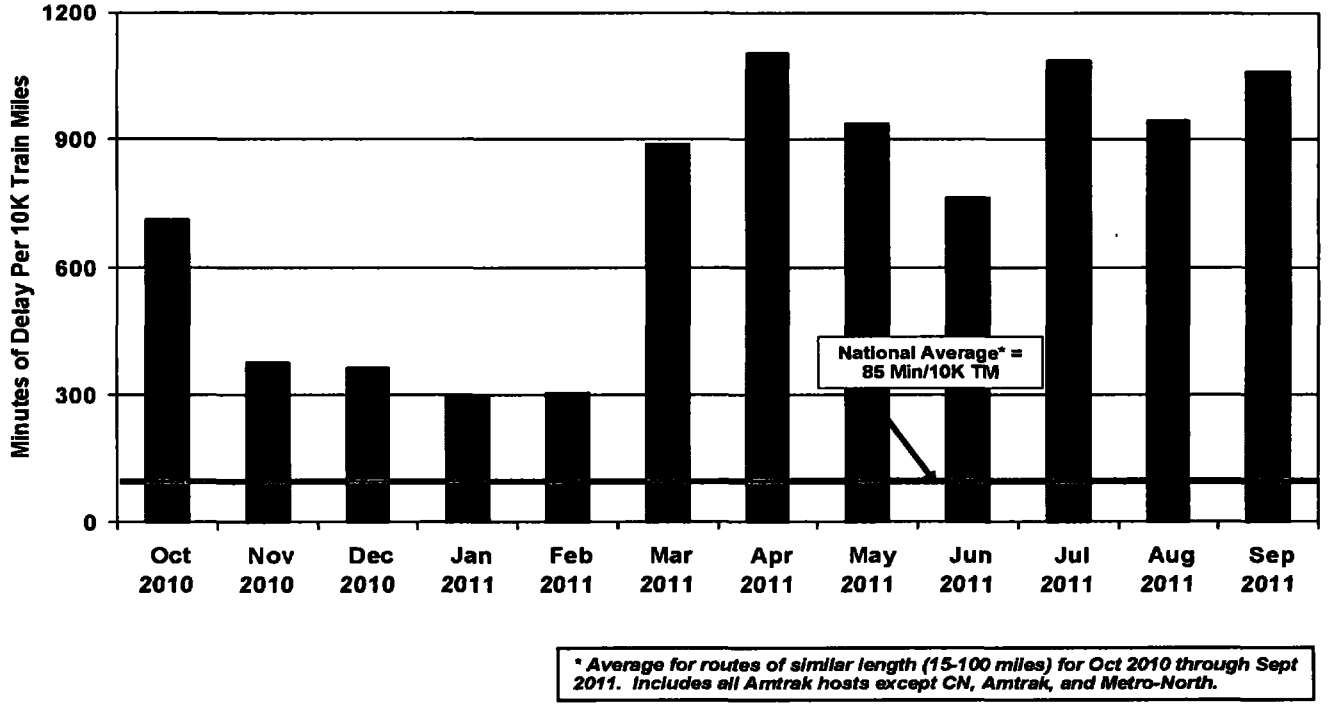
4. *Wolverine (Chicago to Pontiac)*

68. CN exceeded the allowable Host-Responsible Delay minutes for the Wolverine service in every quarter of Fiscal Year 2011.

69. Like many of Amtrak's services on CN, the Wolverine serves several university communities as well as important destinations such as Chicago, Detroit, and Dearborn, Michigan. In recognition of the value that this service provides, the state of Michigan, using state funds as well as funds granted by FRA, is working to purchase and upgrade other portions of the route and is seeking to institute speeds of up to 110 miles per hour over those segments to reduce travel times. Unfortunately, the substandard performance of Amtrak's trains on the two CN segments of the Wolverine route will limit the benefits realized from Michigan's and FRA's investments. Due in part to CN's FTI and other CN-driven delays, the Wolverine service is consistently late.

70. FTI delays on the CN segments have been much higher—often more than 10 times higher—than on comparable segments owned and dispatched by other host railroads:

Wolverine Service
CN Freight Train Interference Delay



71. Frequently, CN dispatchers unlawfully place Amtrak's Wolverine trains into positions behind slower moving freight trains or unlawfully require them to wait for freight trains to pass—clear violations of Amtrak's preference rights.

72. In July 2011, in response to a request from Amtrak for a schedule change that would have addressed issues on another host railroad on this route, CN asked Amtrak to make its Wolverine trip schedule longer to accommodate what CN unabashedly declared was the "increased likelihood of FTI." One of the route segments on which CN anticipated increased FTI delays was the segment between Pontiac and Vinewood, which has so little freight traffic that CN is currently planning to remove one of the two main tracks. This express request to incorporate CN's statutory preference violations into Amtrak's schedules is reflective of CN's approach to its statutory duties.

5. *Lincoln and Texas Eagle (Chicago to Joliet)*

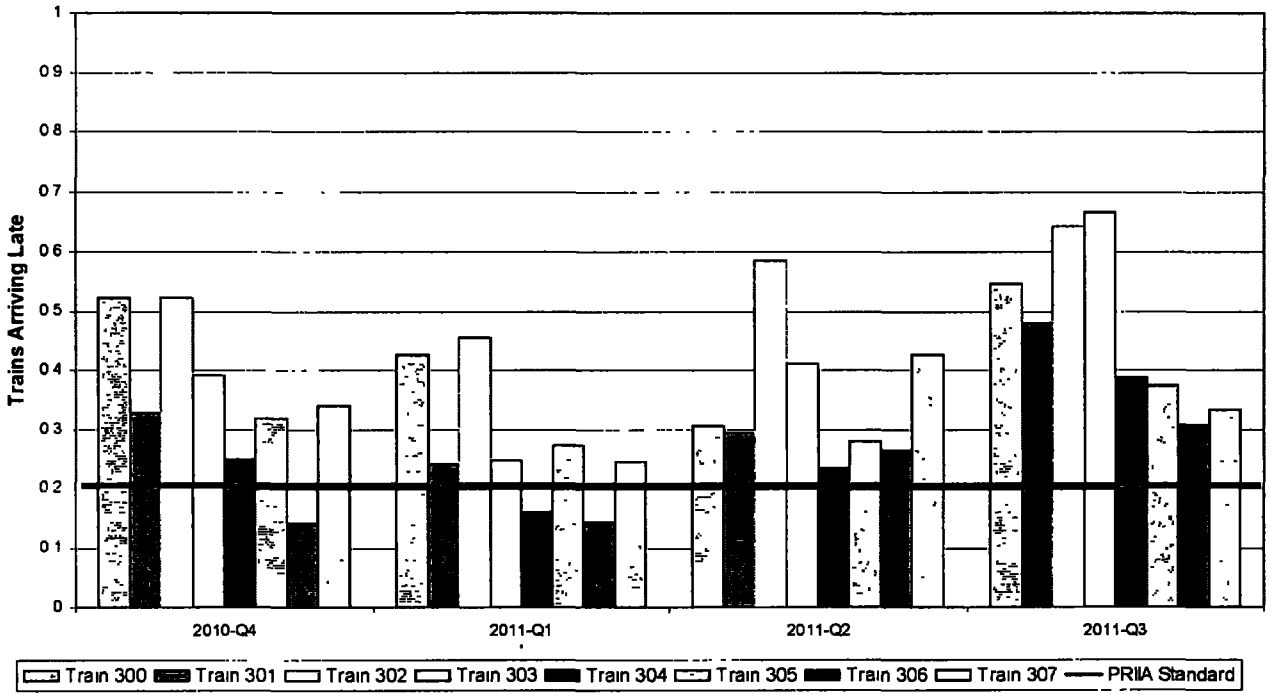
73. During Fiscal Year 2011, neither the Texas Eagle nor the Lincoln service met the Section 207 standards for End Point OTP, All Stations OTP, or Host-Responsible Delay in any quarter.

74. Amtrak's Lincoln and Texas Eagle services traverse the 35.3 mile CN rail segment between Chicago and Joliet, Illinois on their way to and from St. Louis and San Antonio, respectively. These trains carry Illinois State University students and their families back and forth between Bloomington-Normal, Illinois and Chicago, and other travelers between the metropolitan centers of St. Louis and Chicago, and the points in between. These trains also carry riders with government business to the state capital in Springfield.

75. As with other routes dispatched by CN, passengers on these services frequently arrive late to their destinations. The graphs below show the percentage of Lincoln and Texas Eagle trains that arrived late to their end points—in other words, trains that failed to achieve the End Point OTP standard—during Fiscal Year 2011:

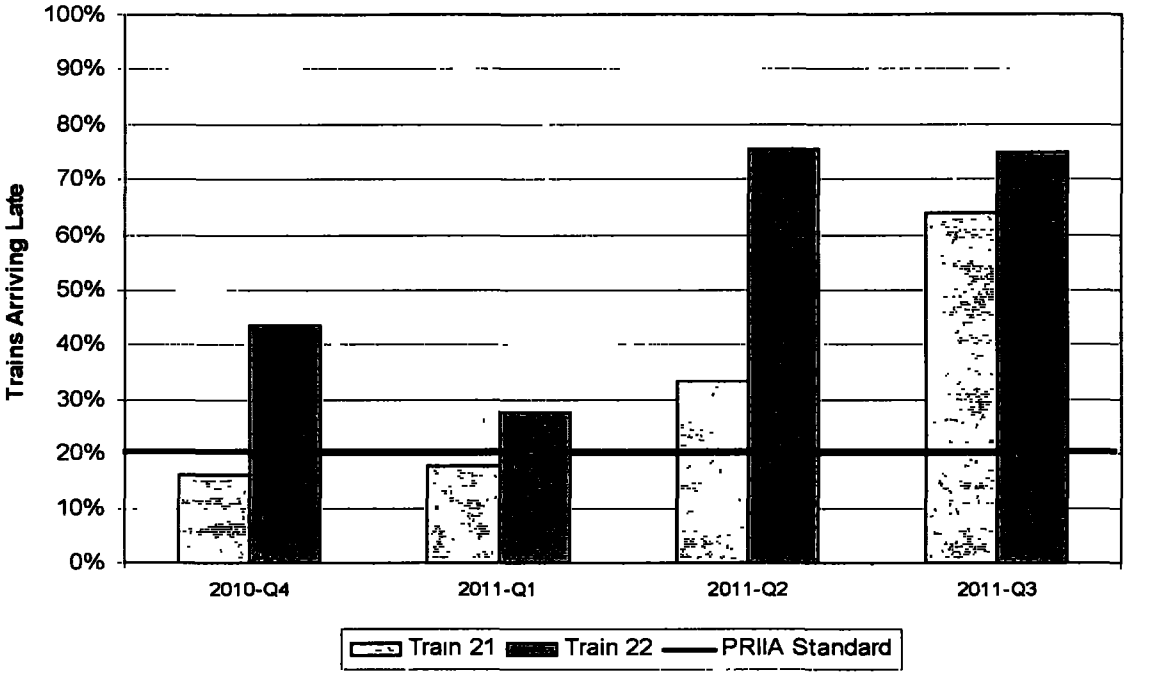
Lincoln Service

Percent of Trains Arriving Late by Quarter: October 2010 - September 2011



Texas Eagle Service

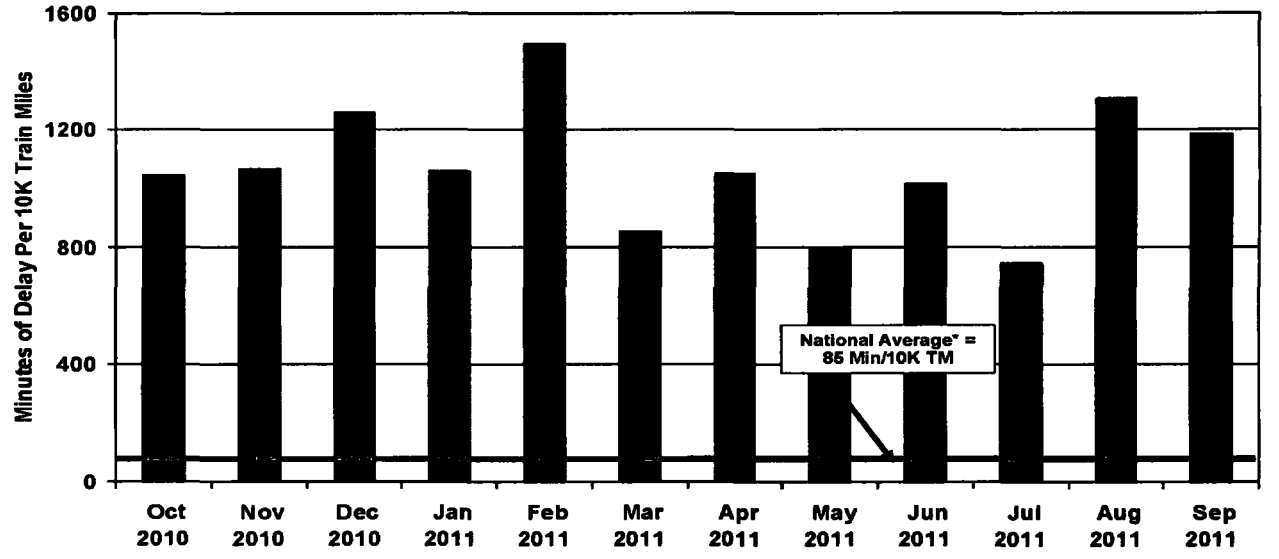
Percent of Trains Arriving Late by Quarter: October 2010 - September 2011



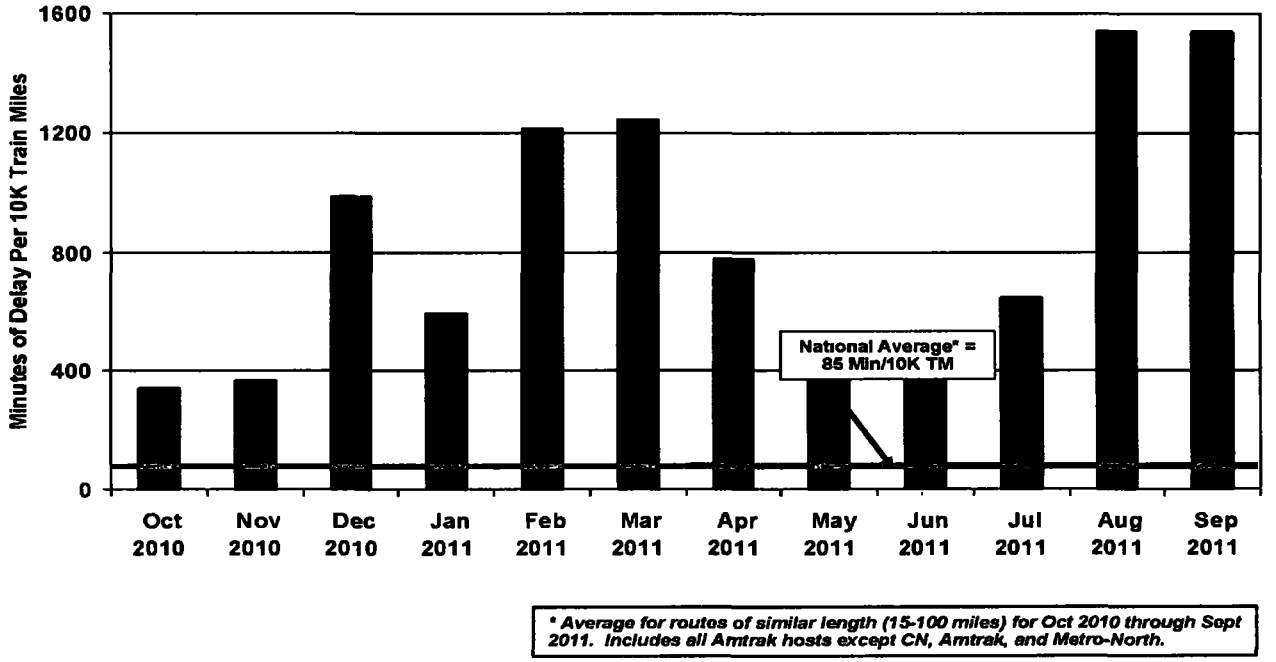
76. As illustrated above, the trains on these services routinely failed to meet the PRIIA End Point OTP standard. Indeed, as the graphs show, Amtrak's Lincoln service train 302 arrived late to its end-point destination more than half of the time in three of the four quarters, as did both trains on the Texas Eagle service during the final quarter of Fiscal Year 2011. The total percentage of trains that were late to their end point destinations on these two routes has exceeded the Section 207 limit of 20% in each of these quarters. The services also failed to meet the All Stations OTP standard in each of the quarters.

77. Host-Responsible Delay on CN's 35.3-mile Chicago-to-Joliet segment is responsible for a significant amount of the delay minutes and lateness that Amtrak trains experience on these routes. The FTI delays alone, on just this one CN segment, come close to exceeding the 900 minutes of total Host-Responsible Delay permitted by the Section 207 standards and dwarf the national average for delays on comparable segments:

Lincoln Service
CN Freight Train Interference Delay



Texas Eagle Service
CN Freight Train Interference Delay



78. One driver of freight train interference on this segment is CN's refusal to coordinate, or even to communicate, with other host railroads to ensure Amtrak's clear passage through crossings controlled by those hosts.

79. Recognizing the value of intercity rail passenger service to this busy corridor, FRA recently committed over one billion dollars to upgrade the segment between Joliet and St. Louis to allow for passenger train speeds of up to 110 miles per hour. The benefits of this significant investment will be sharply curtailed if the same trains that the investment is intended to benefit continue to encounter high levels of CN-responsible delay in the Chicago-Joliet segment.

6. *Cardinal and Hoosier State (Chicago Terminal)*[56]

80. Amtrak's Cardinal and Hoosier State services both traverse a 5.8 mile segment of CN track in the Chicago area. During Fiscal Year 2011, Host-Responsible Delay minutes on the CN segment cost the Cardinal and Hoosier State services 2,062 and 3,071 minutes of delay per 10,000 train miles, respectively—67% of which were attributable to FTI.

V. CAUSES OF SUBSTANDARD PERFORMANCE OF AMTRAK PASSENGER TRAINS THAT OPERATE OVER CN'S RAIL LINES

81. As illustrated above, CN's performance in managing Amtrak passenger trains over CN's rail lines has been dismal. CN's substandard performance is due, in large part, to: (1) CN's pattern and practice of prioritizing freight trains over Amtrak passenger trains, in violation of Amtrak's statutory preference rights, and (2) CN's failure to implement and/or enforce operational procedures that would eliminate, or at least significantly reduce, delays to Amtrak passenger trains.[57]

A. CN's Pattern and Practice of Prioritizing its Freight Trains Over Amtrak Passenger Trains is Unlawful and a Core Cause of the Failure of Amtrak Trains to Achieve the Section 207 Standards

82. CN is a "scheduled railroad," and declares itself—at least as to its own freight traffic—to be a "precision railroad." CN has publicly and repeatedly declared that it is dedicated to achieving, and regularly achieves, on-time performance for freight shippers:

- "[Our] superior business model is what generates the solid returns that CN has been able to deliver over the years and for the future. Our performance is really anchored in the precision railroading model . . . it's all about meticulous scheduling."[58]

---

56 No station stops on these routes are located on the CN segment.

57 This list is meant to be exemplary, not exclusive. Additional causes may contribute to the poor performance.

58 Transcript of CN at National Bank Financial Transportation & Logistics Conference, at 3 (Mar. 24, 2010) (statement of Luc Jobin, Executive Vice President and Chief Financial Officer of CN).

- "[W]e're the best at getting it from point A to point B. No question. We've got great operating metrics, speed and consistency."[59]
- "Operational and service excellence throughout 2010 allowed us to post solid operating metrics while handling a sharp rise in workload with improved reliability for our customers."[60]

83. This commitment to providing its freight customers with precision-level on-time performance stands in stark contrast to CN's abject failure to deliver Amtrak passenger trains on schedule. In fact, CN's success in delivering freight trains consistently on time while it delivers Amtrak trains consistently late strongly suggests that CN's stark failure to meet the congressionally-mandated performance standards with respect to Amtrak passenger trains is the direct result of policy choices and an unlawful preference for freight trains over Amtrak trains.

84. In addition to the contrast between the performance results of freight versus passenger traffic on CN's rail lines, there are at least two other strong indicators that CN has a pattern and practice of prioritizing its freight trains over Amtrak passenger trains in order to meet its own business objectives, and that it is certainly not attempting to meet either the letter of the statute mandating preference nor the spirit or intent of Section 207: (1) the frequency with which Amtrak passenger trains are delayed on CN segments due to freight train interference, and (2) the way in which CN dispatchers and officials have responded to Amtrak's repeated inquiries regarding such delays. Each of these is discussed in more detail below.

1. *Frequent FTI Reflects CN's Pattern and Practice of Prioritizing Freight Trains Over Amtrak Passenger Trains*

85. In Fiscal Year 2011, CN imposed FTI delays on nearly 42% of all Amtrak passenger trains operating over CN routes despite CN's legal obligation to give Amtrak

---

[59] Transcript of CN at National Bank Financial Transportation & Logistics Conference, at 6 (Mar. 24, 2010) (statement of Luc Jobin, Executive Vice President and Chief Financial Officer of CN).

[60] CN Press Release (Jan. 25, 2011) (statement of Claude Mongeau, President and Chief Executive Officer of CN).

passenger trains preference when the needs of Amtrak and freights conflict. Amtrak passenger trains incur more FTI delay per train mile while operating on the CN than they do operating on any other major host railroad. Amtrak passenger trains that experienced FTI delays on CN experienced, on average, 2.4 FTI incidents for a total of 24 minutes per trip. Because CN controls the traffic over its rail lines, and because freight train interference necessarily involves an Amtrak train being delayed by a freight train—delays CN is statutorily obligated to avoid—the frequency of such delays on CN routes is a strong indicator that CN dispatchers are failing afford Amtrak passenger trains preference.

86. The FTI delays on certain segments of Amtrak's City of New Orleans, Illini/Saluki, and Blue Water services, vividly illustrate the problem.

a) City of New Orleans and Illini/Saluki Services

87. In Fiscal Year 2011, CN imposed FTI delays on 99% Amtrak trains on the City of New Orleans service, and 83% of Amtrak trains on the Illini/Saluki service. A disproportionate share of these delays occurred in the 309 miles of track between Chicago and Carbondale—particularly in the 13-mile segment near Champaign—and in the 246.7 miles of track between Fulton, Kentucky and Greenwood, Mississippi.

88. *Chicago to Carbondale Segment.* The pervasiveness of CN-imposed FTI delays between Chicago and Carbondale strongly suggests that CN has a pattern and practice of affording preference to its freight trains. In Fiscal Year 2011, between Chicago and Carbondale, the City of New Orleans and Illini/Saluki trains experienced 1,231 CN-responsible delay minutes per 10,000 train miles, almost half of which—566 minutes per 10,000 train miles—resulted from CN-imposed FTI. During this period, CN imposed 4,083 separate and unique incidents of FTI for a total of 37,617 minutes of FTI delay.

89. An average of one out of every four Amtrak trips along this segment was delayed by a high-priority CN "Q" train. During Fiscal Year 2011, Amtrak train 392 on the Illini/Saluki service, which runs the route between Chicago and Carbondale daily, was delayed by CN train Q194 on seven out of every ten trips for an average of 11 minutes per trip. Similarly, Amtrak train 59 on the City of New Orleans service, which also runs the route daily, was delayed by CN train Q195 three out of every ten trips for an average delay of 13 minutes per trip, within just this segment. As these examples illustrate, CN's dispatchers consistently give preference to CN's Q trains over Amtrak passenger trains, plainly violating Amtrak's statutory preference rights.

90. *Champaign Segment.* Reinforcing the notion that CN has a pattern and practice of prioritizing freight trains over Amtrak passenger trains on these routes, in Fiscal Year 2011, CN imposed on the City of New Orleans and Illini/Saluki services 2,212 minutes of *FTI* delay per 10,000 train miles—compared to the Section 207 allowance of 900 total minutes of Host-Responsible Delay—on a 13-mile section of track located near Champaign, Illinois. During this period, approximately half of the FTI delays were attributable to repeated interference by four regularly scheduled CN freight trains: train numbers 397, 399, 336, and 342.

91. CN's dispatchers frequently dispatch Amtrak passenger trains through the siding at Champaign while allowing CN's freight trains to run on the main track. This requires Amtrak trains to operate at speeds no higher than 40 miles per hour over this segment, while the main track allows for speeds of 79 miles per hour.

92. On August 25, 2011, for example, Amtrak trains 390 and 391 of the Illini/Saluki service were delayed by 4 minutes and 24 minutes, respectively, when the CN dispatcher allowed a CN freight train to occupy the main track, forcing southbound Amtrak 391 to wait behind the freight and northbound Amtrak 390 to run through the siding. When an

Amtrak official questioned CN about the dispatching decision, CN responded matter-of-factly that this was "SOP [standard operating procedure] at Champaign." Indeed, Amtrak employees on the City of New Orleans and Illini/Saluki trains sometimes refer to the Champaign siding as the "passenger main."

93. *16th Street Segment.* CN's pattern and practice of prioritizing freight trains over Amtrak passenger trains between Chicago and Carbondale is further evidenced by CN's actions concerning a recent operating bulletin regarding train movement on a small segment of the route near Chicago. During the week of November 14, 2011, CN issued a new operating bulletin prohibiting trains from running concurrently over adjacent tracks in the half-mile segment south of 16th Street.[61] CN ordered that all trains must obtain permission from the CN dispatcher prior to entering this segment. Frequently, however, the CN dispatcher either dispatches a freight train through the segment despite Amtrak's impending arrival—forcing Amtrak trains to wait for the freight train to clear—or simply does not respond to Amtrak's request for permission to pass through the area—forcing the Amtrak train to stop and wait for permission.

94. *Fulton to Greenwood Segment.* In traversing its route between Chicago and New Orleans, the City of New Orleans service operates over CN tracks between Fulton, Kentucky and Memphis, Tennessee and between Memphis and Greenwood, Mississippi. This is another area in which CN imposes significant FTI delays, which strongly suggest an intentional dispatching pattern and practice of affording preference to CN freight over Amtrak trains. During Fiscal Year 2011, in the Fulton-to-Memphis segment alone, 71% of City of New Orleans trains experienced an FTI delay, with each FTI incident averaging approximately 11 minutes. In

---

[61] CN instituted this practice after two trains clipped each other while operating over the segment.

total, those trains experienced 477 FTI incidents amounting to 5,265 minutes of delay. This equates to 638 FTI delay minutes per 10,000 train miles. CN trains Q194 and Q195 were responsible for 21% of the FTI delay minutes.

95. Similarly, during Fiscal Year 2011, within just the Memphis-to-Greenwood segment, 61% of Amtrak trains experienced at least one FTI delay for an average of approximately 16 minutes per incident. In total, Amtrak trains experienced 687 FTI incidents on this segment for a total of 7,151 delay minutes, equating to 788 minutes of FTI delay per 10,000 train miles for the one-year period. More recently, on November 22, 2011, Amtrak train 59 was delayed for 68 minutes while it was forced to wait for a freight train that was switching cars on the track ahead. These excessive FTI delays—like the excessive FTI delays imposed by CN throughout its system—strongly suggest that CN has a practice of prioritizing its own freight trains over Amtrak passenger trains without regard to and often in direct violation of its statutory obligation to do precisely the opposite.

b) Blue Water Service

96. Amtrak's Blue Water service incurred similar FTI delays as a result of being intentionally dispatched into sidings or otherwise held for CN's freight traffic, which again suggests that CN is engaging in routine and systematic preference violations. During Fiscal Year 2011, 59% of Amtrak passenger trains operating on the Blue Water service experienced FTI delays. In addition, in the month of October 2011 alone, Amtrak trains on the Blue Water service experienced at least 20 delays of ten minutes or more due to interference by CN freight traffic.

97. Numerous examples from that month illustrate CN's pattern and practice of disregarding its legal obligations to afford preference to Amtrak's trains. For instance:

- On October 13, 2011, CN directed Amtrak train 365 to take a 33-minute detour over a track extension through Battle Creek Yard because CN freight trains were blocking the two main tracks.
- On October 20, 2011, CN stopped Amtrak train 365 for 39 minutes because CN freight trains were blocking all four main tracks. CN then directed the Amtrak train to follow a CN freight train for 42 miles to the Lapeer station, despite the fact that there were two sidings before the station into which CN could have directed the freight train.
- On October 23, CN delayed Amtrak train 365 for 17 minutes by forcing it to follow a CN freight train, notwithstanding the availability of sidings into which CN could have directed the freight.

98. As demonstrated above, FTI delays on the Illini/Saluki, City of New Orleans, and Blue Water services are both frequent and substantial. This strongly suggests that CN has a pattern and practice of affording preference to freight trains over Amtrak passenger trains.

2. *CN's Communications to Amtrak Regarding FTI Delays Demonstrate CN's Pattern and Practice of Prioritizing Freight Trains Over Amtrak Passenger Trains*

99. The substance and tone of CN's communications with Amtrak regarding FTI delays to Amtrak passenger trains indicate that CN's avowed "commit[ment] to moving more *freight*, more quickly and with fewer assets,"[62] comes at the expense of its legal obligations to Amtrak passenger service.

100. When an Amtrak train is delayed, Amtrak's conductors, engineers, and train movement managers often attempt to contact CN dispatchers to obtain information about the reason for, or the estimated duration of, the delay. In addition, if delays on a particular segment or route are particularly significant, repetitive, or extensive, an Amtrak official often contacts

---

62 Canadian National Railway Company, "Company Information," http://www.cn.ca/en/company-information.htm (last accessed December 22, 2011) (emphasis added).

CN's NRPC Operations Officer to obtain information from CN regarding the reason for the delay(s) and to open a dialogue as to what might be done to avoid similar delays in the future.[63]

101. CN's responses to Amtrak's delay inquiries (on the occasions when CN chooses to respond), routinely reflect blatant disregard for Amtrak's statutory preference rights. For instance, CN has at times responded to Amtrak's FTI-delay inquiries by stating that it will not look into the causes of reported delays until any outstanding issues regarding CN's contractual incentive payments—which it has called CN's "priority"—are resolved. CN has explained that CN dedicates its limited resources to helping "paying customers," rather than Amtrak. CN also routinely declares itself unencumbered by its legal obligation to afford preference to Amtrak trains and thus free to prioritize its own freight traffic over Amtrak passenger trains whenever an Amtrak train arrives later than scheduled, or "out of slot." This attitude—which is inconsistent with CN's statutory obligations—often compounds delays to Amtrak trains, as short delays become grounds for CN to inflict even longer delays on Amtrak's passengers, all in violation of CN's statutory duties.

102. Amtrak has repeatedly raised with CN the persistent performance deficiencies of Amtrak passenger trains operating over CN's rail lines, and CN has repeatedly rebuffed Amtrak's proposals and its requests that CN develop and implement operating solutions to decrease delays—specifically delays attributable to freight train interference—to Amtrak trains. Communications from CN regarding Amtrak's proposals make clear that CN's commitment to its freight customers takes precedence over its legal obligation to afford Amtrak passenger trains preference. Indeed, in an October 11, 2011 letter from CN to Amtrak, CN stated that making any changes to CN's freight schedules (one solution that Amtrak has proposed to decrease

---

[63] The NRPC Operations Officer was Paul LaDue from 2008-2010 and is currently Mr. LaDue's successor, Mark Nordling.

delays) would be "challenging, at best given CN's pre-existing contractual freight obligations . . . ."

103. These communications, and others like them, plainly demonstrate that, as a matter of policy and business practice, CN prioritizes its own freight trains and schedules and subordinates Amtrak passenger trains to them.

B. CN's Failure to Implement and/or Enforce Simple Operational Procedures to Eliminate Delays

104. Many delays experienced by Amtrak trains on CN-owned-and-dispatched rail lines are directly attributable to CN's failure properly to implement, execute, and/or enforce simple operational protocols. Indeed, many of these delays are attributable to CN's operational negligence. For example:

105. CN fails to communicate with other host railroads about the location of Amtrak passenger trains on multi-host-owned routes, and refuses to cooperate with other host railroads to minimize delays to Amtrak's passenger trains on those routes. This intransigence contributes to the high instances of delay that Amtrak's trains experience on CN's rail lines.

106. For example, the Host-Responsible Delays to Amtrak's Lincoln and Texas Eagle trains while operating over the 35.3 mile CN-owned segment between Chicago and Joliet are among the highest on the Amtrak system. A large percentage of these delays occur at crossings controlled by other railroads. CN's failure to effectively communicate with those other railroads regarding the impending arrival of Amtrak trains hinders the other railroads' ability to clear the routes for those trains.

107. Amtrak's attempts to resolve this problem began in September 2010, when Amtrak sought to initiate a cooperative effort between Amtrak, CN, and the Indiana Harbor Belt Railroad (IHB), which controls the crossing with the largest amount of delay in this segment.

Amtrak's objective was to improve dispatching communication among the railroads in order to reduce delays. In November 2010, Amtrak, CN, and IHB participated in joint teleconferences to discuss ways in which the railroads could work together to ensure that IHB was made aware of the impending arrival of Amtrak trains. The group developed a tentative plan to provide IHB with access to CN's dispatching screens, implement communication protocols between CN and IHB, and educate dispatchers at CN and IHB regarding the new protocols.

108. In contrast to this initial progress, CN then ceased all participation in Amtrak's and IHB's attempts to improve communication protocols. In December 2010 and in January, February, May, June, and July 2011, Amtrak made phone calls and sent emails to CN requesting follow-up conference calls and status updates regarding the performance improvement initiative. CN rebuffed these requests by either refusing to respond or by promising a substantive response at another time. As a result of CN's refusal to participate in the effort, Host-Responsible Delays between Chicago and Joliet have remained severe. These delays reached 3,041 minutes per 10,000 train miles during the last quarter of Fiscal Year 2011, over three times the 900-minute allowance.

109. As these communication failures have caused delays to Amtrak trains on CN's rail lines, CN's implementation of communication protocols and/or other operational solutions to improve communication among host railroads would improve the performance of Amtrak trains.[64]

110. Another example of CN's operational negligence is CN's late issuance of daily bulletins and its lack of responsiveness in addressing these problems when they occur. Before an Amtrak train can depart the station at the origin of its trip, the Amtrak crew on that

[64] In fact, a December 18, 2011 audio recording of a CN dispatcher at 16th Street illustrates that CN can and does call other dispatchers to move its own freight trains through multi-host-owned areas.

train must receive bulletin orders from each of the host railroads that owns tracks along the route. The bulletin orders set forth slow orders, maintenance of way projects, signal failures, and other such issues on the route on that particular day. If the host delivers the bulletin orders late, the Amtrak train must delay its departure until the orders arrive. CN's failure to timely deliver these orders is yet another source of delays to Amtrak's trains on CN routes.

111. Amtrak's records reflect that in October of 2011 alone, Amtrak passenger trains were significantly delayed at least three times due to CN's late issuance of bulletin orders:[65]

- On October 7, 2011, a CN dispatcher's failure to timely provide Amtrak with bulletin orders caused Amtrak train 364 on the Blue Water service to delay its departure from the Battle Creek station by 20 minutes. The Amtrak conductor spent approximately 45 minutes attempting to contact the CN dispatcher, whom he called four times before finally receiving the proper orders enabling the Amtrak train to depart.
- On October 14, 2011, CN's Chicago dispatcher failed to timely provide Amtrak with bulletin orders, which caused Amtrak train 393 on the Illini/Saluki service to depart 23 minutes after its scheduled time. Amtrak tried several times to contact the CN dispatcher to inform him that he had issued incomplete orders. When he was finally reached, the dispatcher responded curtly, hung up on the Amtrak employee, and again sent bulletin orders that were incorrect.
- On October 21, 2011, CN's late issuance of bulletin orders delayed Amtrak train 364 on the Blue Water service 13 minutes in its departure. Amtrak had to contact the CN dispatcher and request that the bulletin orders be sent. The CN dispatcher offered no explanation for the delay.

112. Delays to Amtrak passenger trains that are attributable to CN's late issuance of bulletin orders can be entirely avoided with minimal effort on CN's part.

113. Delays to Amtrak trains also occur when CN fails to provide contingencies for the expiration of its own freight crews. Pursuant to the Hours of Service Act, a freight crew may

---

[65] These examples include only the late-bulletin delays of 10 or more minutes and are thus not meant to be an exhaustive list of delays caused by late bulletins in October 2011.

operate for a maximum of 12 hours at a time.[66] If a freight train is still moving under the operation of a crew that has worked beyond the 12-hour limit, the FRA may penalize both the railroad and the crew.[67]

114. From the moment a freight crew goes on duty, CN knows exactly when the crew will expire, and CN, therefore, has an opportunity to plan for that expiration so as not to delay Amtrak passenger trains. Nevertheless, Amtrak trains are delayed by CN freight trains that stop on the tracks to change crews after freight crews expire en-route. For example, on October 30, 2011, Amtrak train 393 was held for 50 minutes while a CN freight train changed crews. More recently, on December 18, 2011, CN, knowing that Amtrak train 307 would soon arrive at Chicago's Cermack interlocking, allowed freight train M393 to block one main track while its crew expired, then ran another freight train, M338, onto the other main track, causing delays to Amtrak train 307. CN could avoid these types of events and reduce delays to Amtrak through the exercise of due care.

115. These examples of CN's operational negligence have a significant cumulative effect on the on-time performance of Amtrak trains.

* * *

116. For the past two years, Amtrak has sought to engage in a serious dialogue with CN management to remedy the excessive delays experienced by Amtrak trains on CN's rail lines. In October 2009, Amtrak and CN senior management met, and CN agreed to provide a comprehensive plan to improve the performance of Amtrak trains that operate over the CN. To this day, however, CN has failed to provide a comprehensive plan or to take any meaningful steps to improve the treatment of Amtrak's trains on its rail lines.

---

66 49 U.S.C. § 21103(a)(2).

67 *Id.* § 21303.

VI. PRAYER FOR RELIEF

117. Amtrak respectfully requests that the STB initiate and conduct a comprehensive investigation into the causes of the substandard on-time performance and excessive delays experienced by Amtrak passenger trains operating over CN's rail lines, as it is required to do upon the filing of a complaint, pursuant to 49 U.S.C. § 24308(f)(1).

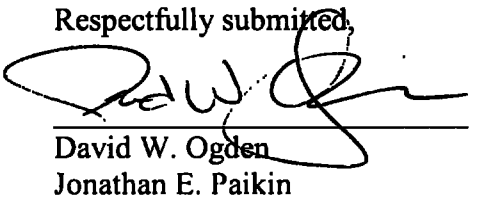
118. Amtrak submits that the recommendations for improvement should include, at least, that:

- CN cease engaging in a pattern and practice of failing to provide preference to Amtrak trains over freight transportation in violation of 49 U.S.C. § 24308(c);
- CN develop, implement, and/or comply with operational protocols that would reduce delays to Amtrak passenger trains that operate over CN's rail lines, so that on-time performance and delays on these trains comply with the Section 207 standards.

119. Amtrak further submits that the STB should find CN has engaged in a pattern and practice of routinely violating Amtrak's statutory right of preference, codified at 49 U.S.C. § 24308(c), and that the STB should award damages sufficient to deter future violations of the law by CN.

DATED January 19, 2012

Respectfully submitted,



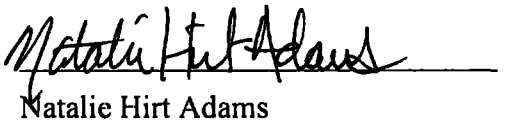
David W. Ogden
Jonathan E. Paikin
Wilmer Cutler Pickering Hale & Dorr, LLP
1875 Pennsylvania Avenue, NW
Washington, DC 20006
Telephone: (202) 663-6000
Email: Jonathan.Paikin@wilmerhale.com

William Herrmann
Eleanor D. Acheson
Christine Lanzon
National Railroad Passenger Corporation
60 Massachusetts Avenue, N.E.
Washington, D.C. 20002
Telephone: (202) 906-3996
Email: LanzonC@Amtrak.com

Counsel for National Rail Passenger Corporation

CERTIFICATE OF SERVICE

I hereby certify that on January 19, 2012, I sent the foregoing petition by overnight mail to CN Vice President and Chief Legal Officer Sean Finn, at 935 de La Gauchetière Street West, Montreal, Quebec, H3B 2M9, Canada, and to CN's General Counsel's office at 17641 Ashland Avenue, Homewood, Illinois 60430-1345.



Natalie Hirt Adams
Wilmer Cutler Pickering Hale & Dorr, LLP
1875 Pennsylvania Avenue, NW
Washington, DC 20006
Telephone: (202) 663-6000